IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1126 OF 2006

NISHAD AHMED ABDUL REHMAN SHAIKH, residing at Room No. 7, Choukata Compound, Mohili Village Pipe Line, Sakinaka, MUMBAI 400 072 .. PETITIONER

Versus

1. THE COMMISSIONER OF POLICE GREATER MUMBAI

2. THE STATE OF MAHARASHTRA through the Secretary Home Department (Spl.) Mantralaya Mumbai.

3. The Superintendent Nashik Road Central Prison Nashik .. RESPONDENTS

Mr. U. N. Tripathi for petitioner

Mr. D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI & ANOOP V. MOHTA, JJ.

DATED:-31/1/2007 & 2/2/2007

ORAL JUDGMENT: (Smt. Ranjana Desai, J.)

. The petitioner ("the detenu" for convenience) is detained under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short) with a view to

preventing him from acting in any manner prejudicial to the maintenance of public order under the order of detention dated 24th April, 2006 issued by the detaining authority i.e. the Commissioner of Police, Brihan Mumbai. The order of detention, the grounds of detention and the material in support thereof were served on the detenu on 26/4/06. In this petition the detenu has challenged the said order of detention.

2. The order of detention is based on one case viz. C.R. No. 553/05 registered at Saki Naka Police Station under Sections 307 and 324 read with 34 of the Indian Penal Code ("I.P.C." for short) in respect of an incident dated 21/11/05 and two incamera statements of witnesses A and B. Statement of Witness A is recorded on 23/3/2006. Witness A speaks about an incident which had occurred in November, 2005. Statement of witness B was recorded on 24/3/2006. Witness B speaks about an incident which had taken place in October, 2005.

3. On the basis of the said case and the two incamera statements, the detaining authority was satisfied that the detenu is a dangerous person as defined under Section 2(b-1) of the said Act; that

he has unleashed a reign of terror and has become a perpetual danger to the society at large in the concerned localities in the jurisdiction of Sakinaka Police Station and that people residing and carrying out their daily vocations in the said localities and areas are terror stricken and their normal life is affected adversely thereby. The detaining authority was further satisfied that the detenu's activities are prejudicial to the maintenance of public order and hence he needs to be detained under the said Act.

4. We have heard Mr. Tripathi, learned counsel for the petitioner-detenu, at some length. Mr. Tripathi assailed the impugned order of detention on two counts. He submitted that the incident on which reliance is placed by the detaining authority can by no stretch of imagination be said to affect public order and, therefore, issuance of detention order on the basis of the said incident is not justified. Mr. Tripathi further contended that there is an inordinate and unexplained delay in issuing the order of detention and on that count also the order of detention deserves to be set aside.

5. Mr. Mhaispurkar, learned APP on the other hand submitted that there was ample material before the detaining authority to come to the conclusion that the petitioner is a dangerous person within the meaning of the said Act and his activities have created a reign of terror in the concerned area. He submitted that the detention order is perfectly justified. The learned APP drew our attention to the affidavit of the detaining authority, to the affidavit of the officer of the Sponsoring Authority and the affidavit filed on behalf of the State Government. He contended that the time taken to issue the order of detention is explained by the detaining authority as well as the State Government and hence the submission that there is delay in issuing detention order must also be rejected.

6. We may first deal with the submission of Mr. Tripathi that the grounds of detention do not indicate that the activities of the detenu have disturbed the public order.

7. The first incident has taken place on 21/11/05 and is registered vide C.R. No. 553/03. The complainant Manojkumar Lalji Saroj is working in Radheshyam Dairy and Sweet Mart situated at Samson

Sadan, Mohili Pipe Line, Sakinaka, as a waiter. On 21/11/05 in the morning at about 11.00 hrs. the detenu and his associates entered the said dairy, and placed order for eatables. The complainant Manojkumar Saroj supplied food and tea to them. After consuming food, the detenu and his associates started leaving the dairy without paying the bill. The complainant asked the detenu to pay the bill. The detenu and his associates threatened him and abused him. They started walking away. At that time the proprietor of the dairy Shri Sureshkumar Yadav asked the detenu to pay the bill. However, the detenu and his associates abused him. The detenu and his associates man-handled him and refused to pay the bill. Sureshkumar Yadav then asked the detenu not to abuse him and he asked him as to why he was abusing him. The detenu was annoyed at this. He picked up a scissor from the pan stall of Shri Dukhiram Bhonairam Chaurasia. His associates removed bamboo sticks from the roof of the said paan shop and, thereafter the detenu and his associates started assaulting Sureshkumar Yadav with scissor and bamboo sticks. While assaulting the detenu shouted that the proprietor should be finished. After saying so he stabbed Sureshkumar Yadav on the stomach with scissor and

inflicted injury. Seeing this the complainant and passers-by rushed forward to rescue Sureshkumar Yadav. On this the detenu raised the scissor and abused them. He and his associates brandished their weapons, people became panicky and they ran helter-skelter. Sureshkumar Yadav who had sustained injuries collapsed in front of the dairy. Thereafter the detenu and his associates went away.

8. Injured Sureshkumar Yadav was taken in a rickshaw by complainant Manojkumar Saroj to Rajawadi Hospital for treatment. The complaint of Manojkumar Saroj came to be recorded. Offence came to be registered and the detenu and his associates were arrested on 21/11/05.

9. In our opinion, the nature of this incident, the manner of its commission and other attendant circumstances clearly indicate that it had affected the public order. The incident had taken place at 11 O'clock in the morning at a public place namely a dairy. The detenu and his associates entered the dairy. They demanded eatables and refused to pay money and when money was asked, the detenu and his associates started abusing the complainant and the owner of the dairy. The owner was stabbed by the

detenu with scissor. Being a dairy, obviously at 11 O'clock in the morning there are bound to be customers present. The material in support of this C.R. indicates that in fact the customers were present and this incident unleashed a reign of terror. Passers-by started running helter-skelter. People brought down the shutters of their shops. That public order was affected is borne out by the statement of the complainant as well as the statement of Dukhiram B. Chaurasia, the owner of Paan stall and the proprietor of the dairy. In our opinion, an incident of this type clearly falls within the meaning and ambit of the term 'public order'.

10. Statement of Witnesses A and B also indicate that the detenu and his associates move about in the concerned area with weapons, they threaten people at the point of weapons and ask for Hafta. These statements also indicate that the detenu is a dangerous person and that he has taken to the life of crimes. In our opinion therefore, the first submission of Mr. Tripathi that the grounds of detention do not disclose that public order is affected must be rejected and is rejected as such.

11. Second submission of Mr. Tripathi is that there is an inordinate and unexplained delay in passing the order of detention. In this connection it is necessary to note certain dates.

12. Incident in respect of which C.R. No. 553/05 was registered had taken place on 21/11/05. The detenu was arrested on the same day. He was ordered to be released on bail on 4/1/06. However, he availed of the bail order on 9/1/06. Confidential inquiry was conducted about the detenu's activities. It was found that the detenu had victimised number of people, however, out of fear they were not coming forward to give their statement against the detenu. It is only on condition of anonymity that the statement of witness A was recorded on 21/3/06. Witness A deposed about an incident which had taken place in the second week of November, 2005. Statement of witness B was recorded on the condition of anonymity on 24/3/06 in which witness B deposed about an incident which had taken place in the fourth week of October, 2005. Thereafter after collecting the necessary documents the Sponsoring Authority submitted the proposal on 28/3/06 and the detention order was issued on 24/4/06.

13. Relying on the judgment of the Supreme Court in **Pradeep Nilkanth Paturkar v. S. Ramamurthi & Ors., 1994 Cri. L. J. 620**, Mr. Tripathi pointed out that the petitioner was released on bail on 9/1/06. Statements of witnesses A and B came to be recorded in March, 2006, The detention order was passed on 24/4/06. He submitted that obviously statements of witnesses A and B were recorded to fill in the gap between the first incident and the date of detention order. He submitted that there is no explanation for this delay.

14. The learned counsel also relied on judgment of the Division Bench of this court to which one of us (Smt. Ranjana Desai, J.) is a party in **Austin William Luis Pinto v. The Commissioner of Police, Greater Mumbai & Ors. 2005 ALL MR (Cri.) 28** and on an unreported judgment of this court in **Haroon Mohamed Naim Chaudhari v. Shri A.N. Roy, Commissioner of Police, Brihan Mumbai & Ors. in Criminal Writ Petition No. 260 OF 2006 decided on 28/7/06**.

15. While judging whether there is any delay in issuing the detention order, necessary facts and

circumstances of each case will have to be considered. A person is preventively detained so that he does not indulge in prejudicial activities to which he is accustomed. While examining the aspect of delay the court has to consider whether causal connection between the prejudicial activity and the need to detain the person is snapped on account of delay. There has to be a live link between the prejudicial activities. Apart from this the nature of the prejudicial activity in which the detenu is involved and his propensity to indulge in similar activities in future have also to be considered. It is a settled law that there are no fixed formulae or hard and fast rules which can be followed while examining delay. There may be some similarity between the pattern of delay in passing two detention orders. However, because one order is set aside on the ground of delay, the other order may not necessarily be set aside on that ground. Circumstances may differ and in a given case even unexplained delay of some duration may not snap the causal connection.

16. In this connection we may refer to the judgment of the Supreme Court in **T. A. Abdul Rahman v. State of Kerala, AIR 1990 SC 225.**

Following paragraph from the said judgment may be quoted:

> "The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and

> reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case."

17. It is also necessary to refer to the judgment of the Supreme Court in **Hemlata Kantilal Shah v. State of Maharashtra, AIR 1982 SC 8**. The following paragraph from the said judgment is material:

> ""Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority."

18. Reference may also be made to the judgment of the Supreme Court in **Abdul Salam alias Thiyyan v. Union of India & Ors., AIR 1990 SC 1446**. In that case the Supreme Court quoted its observation in **Yogendra Murari v. State of U.P., A.I.R. 1988 SC 1835**. We may reproduce the said quotation;

"It is not right to assume that an order of detention has to be mechanically struck down if passed after some delay..... It is necessary to consider the circumstances in each individual case to find out whether the delay has been satisfactorily explained or not".

19. The Supreme Court then observed as under:

"That apart, we are unable to agree with the learned counsel that because of this delay the necessary nexus got served and that the grounds have become stale and illusory. In appreciating such a contention, the Court also has to bear in mind the nature of the prejudicial activities indulged in by the detenu and the likelihood of his repeating the same. It is this potentiality in him that has to be taken into consideration and if the detaining authority is satisfied on the available material then on mere delay as long as it is not highly unreasonable and

undue the Court should not normally strike down the detention on that ground"

20. Similar view has been reiterated by the Supreme Court in **Rajendrakumar Natvarlal Shah v. State of Gujarat, AIR 1988 SC 1255**. In fact in **Paturkar's case (supra)** on which heavy reliance is made by Mr. Tripathi after taking a resume of several cases, the Supreme Court has observed that a perusal of the various decisions of this court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that particular case.

21. The present case will have to be examined in the light of the above well settled principles. We have already reproduced important dates. The detenu was released on 4/1/06. Thereafter the statements of witnesses A and B were recorded on 23/3/06 and 24/3/06 respectively. The proposal was submitted on 28/3/06 and detention order was issued within a month's time i.e. on 24/4/06. It is true that in **Paturkar's case** the Supreme Court observed that long after the detenu was released on bail, statements of witnesses A to E were recorded and that was done to fill in the gap between the said

incident and the detention order but the question is whether to the facts of this case the ratio of the said judgment can be said to be applicable.

22. We have already reproduced the 1st incident in which the detenu is involved. We have no manner of doubt that, that incident had affected the public order. It is not clear as to what was the nature of offence in which the detenu was involved in **Paturkar's case.** Having considered the nature of the first incident on which reliance is placed by the detaining authority, we feel that the detenu has immense potentiality to indulge in activities prejudicial to the maintenance of public order in future. The seriousness of the said offence and the detenu's propensity will also have to be considered while judging the delay. It is important to note that in **Paturkar's case**, the Supreme Court had quoted the observations of the High Court that though the statements of witnesses were recorded in March, 1991, the procedure required some time before the powers were exercised. It was argued that explanation given by the High Court for the delay namely that the procedure required sometime before the powers are exercised is not the explanation offered by the

detaining authority and, therefore, that explanation should not be accepted. Obviously this argument found favour with the Supreme Court and the Supreme Court observed that taking into consideration the unexplained delay the order of detention must be quashed. It appears that in that case no explanation whatsoever was given as to why only after the detenu was successful in getting the bail, statements of witnesses were recorded.

23. In this case the detaining authority has said as under:

> "I state that the detenu was arrested in CR No. 553/05 on 21/11/2005 and was ordered to be released on bail on 4/1/2006. I say that the detenu had availed the said bail facility on 9/1/2006. I state that considering the prejudicial activities in which the detenu and his associates were involved, confidential enquiries were made in the locality about the criminal activities of detenu and his associates and it was found that number of people were victimized in the recent past due to the

prejudicial activities of detenu and his associates. However, since the detenu and his associates were dreaded criminal nobody was coming forward to give statements against them. It was only after giving them assurances that their names and identifying particulars would be kept secret and they would not be called upon to give statement evidence before any Court or open forum, two witnesses shown their willingness to give their statements which were recorded incamera and those statements were also verified by the Assistant Commissioner of Police of the Division. The Assistant Commissioner of Police was not only satisfied about the identity of the witnesses but also satisfied about the truthfulness of the incident and fear expressed by the witnesses.

. I state that in view of the verification of those incamera statements done by subordinate Senior Officer, I was satisfied that the said incident were true and the witnesses were not ready and

willing to depose and it is only after giving assurance, they have come forward to give their statements. Hence it is denied that the statements were belatedly recorded to fill up lacuna."

24. The detaining authority has, therefore, stated that confidential enquiries were made in the localities about the criminal activities of the detenu. The witnesses were not coming forward to give statements against the detenu. It is only after giving assurances that their names will not be disclosed that statements of witnesses came to be recorded.

25. We may also refer to the affidavit of Mr. Babanrao Krishnaji Sapkal, Police Sub-Inspector, atpresent attached to Sakinaka Police Station, Mumbai. Mr. Sakpal has denied that the incamera statements of witnesses were deliberately recorded belatedly to fill in the gap between the incident and the detention order. It is Mr. Sapkal who had carried out confidential enquiries and hence his affidavit is important. He states as under:

"I state that confidential enquiries were

made by me in the locality about the criminal activities of detenu and his associates and it was found that number of people were victimized in the recent past due to the prejudicial activities of detenu and his associates. However, since the detenu and his associates were dreaded criminal nobody was coming forward to give their statements against them. It was only after giving them assurances that their names and identifying particulars would be kept secret and that they would not be called upon to give statement, evidence before any Court or open forum, two witnesses shown their willingness to give their statements which were recorded in camera by me and those statements were also verified by the Assistant Commissioner of Police of the Division. The Assistant Commissioner of Police was not only satisfied about the identity of the witnesses but also satisfied about the truthfulness of the incident and fear expressed by the witnesses. Hence, it is denied that those incamera statements

> were recorded deliberately so as to enable issuance of the Detention Order against the detenu."

26. Therefore, the person who conducted the confidential enquiries has come forward to file affidavit in this case. Obviously therefore, the facts of this case cannot be equated with the facts which were before the Supreme Court in **Paturkar's case**. We are of the opinion that the said judgment is not applicable to the present case.

27. Even in **Austin Pinto's case (supra)** this court has categorically observed that there is no explanation as to why incamera statements were not recorded even though the detenu was in custody from 1/5/2003 to 2/7/2003. It is pertinent to note that in **Austin Pinto's case (supra)** the incident on which reliance was placed was held to be one affecting law and order. This court observed that considering the fact that an incident clearly affecting the law and order has been cited as the first ground, in the facts of this case, these belated statements have an adverse impact on the detention order. We have already held that in this case the first incident affects public order. We

have held that the detenu has propensity to indulge in similar prejudicial activities in future. Such were not the facts in **Austin Pinto's case**. The judgment in Austin Pinto's case will, therefore, have no application to the facts of the present case. In our opinion, even the judgment of this court in **Haroon Choudhary's case (supra)** does not help the detenu. It is not clear from the said judgment what were the facts before this court. Reliance placed on the said judgment is, therefore, misplaced.

28. In view of the above, we are of the opinion that there is no delay in issuing order of detention. The explanation offered by the detaining authority as well as the sponsoring authority is satisfactory. Considering the nature of the prejudicial activities in which the detenu is involved and his propensity to indulge in similar prejudicial activities in future, it cannot be said that there is any delay in issuing detention order. The order of detention is perfectly legal and justified. The petition must, therefore, be dismissed and is dismissed as such.

29. Office to provide authenticated copy.

JUDGE.

JUDGE.

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Vs.

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GR. BOMBAY & ORS. .. RESPONDENTS

Mr. U. N. Tripathi for petitioner

Mr. D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &

ANOOP V. MOHTA, JJ.

DATED:-31/1/2007 &

2/2/2007

OPERATIVE PART OF THE ORDER

. For the reasons recorded separately in the Oral Judgement, this Court has dismissed the petition

filed by the petitioner-detenu.

JUDGE

JUDGE